

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	No. 1:18-cr-167
-v-)	
)	Honorable Paul L. Maloney
HOWARD ANTHONY MAYFIELD, et al.,)	
Defendants.)	
_____)	

OPINION AND ORDER DENYING MOTION TO SUPPRESS

The Government sought and obtained two warrants for electronic surveillance. Eventually, the Government indicted twenty-seven defendants as participants in a conspiracy to distribute controlled substances. Defendant Howard Mayfield filed a motion to suppress the evidence obtained through the electronic surveillance, challenging the necessity of the wiretap.¹ (ECF No. 361.) The Court finds that the Government met its burden and will deny the motion to suppress.

I.

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Title III), 18 U.S.C. §§ 2510-2522, provides the authority and requirements for wiretaps. *United States v. Wright*, 635 F. App'x 162, 165-66 (6th Cir. 2015). "The basic standards for a wiretap are similar to those for a search warrant, but there also must be strict compliance with Title III[.]"

¹ Multiple co-defendants filed "me too" motions, seeking the same relief on the same grounds. Each co-defendant has alleged sufficient facts to establish that he or she is an aggrieved person and has standing to join the motion. On the Court's order, counsel for Defendant Mayfield presented argument on behalf of all of the defendants who joined the motion. Defendant Starr raised an additional issue in her motion, which the Court has addressed.

United States v. Alfano, 838 F.2d 158, 161 (6th Cir. 1988). When reviewing orders permitting electronic surveillance, courts should give "great deference to the determinations of the issuing judge." *United States v. Rice*, 478 F.3d 704, 709 (6th Cir. 2007) (quoting *United States v. Corrado*, 227 F.3d 528, 539 (6th Cir. 2000)).

Title III authorizes the Government to intercept electronic communications if certain conditions are met.

As a prerequisite to surveillance, the government must submit a properly authorized application and obtain an approval order from a judge of competent jurisdiction. 18 U.S.C. § 2516. The Act not only delineates the substantive provisions that must be included in both the surveillance application and authorizing order, but also proscribes the offenses covered under the Act, requires specific findings of fact on the part of the issuing judge with regard to probable cause, and places temporal limitations on the validity of the order.

United States v. Gray, 521 F.3d 514, 521 (6th Cir. 2008). The "necessity requirement" for a wiretap authorization arises under 18 U.S.C. § 2518(1)(c), which provides that an application for electronic surveillance contain "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous[.]" *Rice*, 478 F.3d at 709-10; *see Alfano*, 838 F.2d at 163 (referring to the same requirement as a "needs statement"). The necessity requirement ensures that the Government does not resort to wiretaps "in situations where traditional investigative techniques would suffice to expose the crime." *Rice*, 478 F.3d at 710 (quoting *Alfano*, 838 F.2d at 163). Put another way, the necessity requirement assures that wiretaps are not used as the initial step in a criminal investigation. *Id.* (quoting *United States v. Giordano*, 416 U.S. 505, 515 (1974)).

To authorize a wiretap, a court must find that other investigative methods for collecting information would not be successful. *Alfano*, 838 F.2d at 163. Before applying for a Title III wiretap authorization, the Government must have given "serious consideration to non-wiretap techniques." *Rice*, 478 F.3d at 710 (quoting *Alfano*, 838 F.2d at 163-64). The Government must inform the court why it believes that the non-wiretap techniques have been or will be inadequate. *Id.* "[T]he Government is not required to prove that every other conceivable method has been tried and failed or that all avenues of investigation have been exhausted." *Alfano*, 838 F.2d at 163.

While the prior experience of investigative officers is indeed relevant in determining whether other investigative procedures are unlikely to succeed if tried, a purely conclusory affidavit unrelated to the instant case and not showing any factual relations to the circumstances at hand would be . . . inadequate compliance with the statute.

Rice, 478 F.3d at 710 (quoting *United States v. Landmesser*, 553 F.2d 17, 20 (6th Cir. 1977)).

Courts must suppress information gathered in violation of Title III. 28 U.S.C. § 2515. When an aggrieved person moves to suppress "the contents of any wire or oral communication intercepted pursuant to this chapter" and establishes that the "communication was unlawfully intercepted," 18 U.S.C. § 2518(10)(a)(i), then "no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court . . .," *id.* § 2515. *See Rice*, 478 F.3d at 710; *see also Gray*, 521 F.3d at 522-22 (noting that suppression is not required for technical defects).

II.

Defendants generally complain that the warrant applications failed to establish the necessity requirement. More specifically, Defendants argue the warrant applications contain too many general statements about why traditional investigative techniques would not work. Defendants reason that the statements on the supporting affidavits would apply in every criminal investigation. Defendants point to a few examples of broad, generalized statements. Defendants argue that the second application relies on information gathered during the wiretaps authorized by the first application.

A.

The applications for wiretaps and the supporting affidavits are filed in case number 1:18-mc-21. All of the documents are filed under seal. The affidavit for the first application is file number 2-3 and is 87 pages long. The necessity requirement allegations begin on page 58. The affidavit for the second application is file number 7-3 and is 102 pages long. The necessity requirement allegations begin on page 69.

The Court has reviewed the warrant applications and affidavits, with deference to the issuing judge who issued the warrants. Although the warrant applications and affidavits do contain some generic, boilerplate statements, the documents also contain specific assertions about then on-going investigations and about the targets of the surveillance. The Government has identified a number of traditional investigative tools and explained how those tools were used or explained why they were not used. The Government tried a number of traditional investigative tools to learn about the Drug Trafficking Organization (DTO), including physical surveillance, confidential sources, pen registers, mobile tracking devices,

video cameras, review of financial records and working with local law enforcement teams. Those tools produced some useful information, but each tool had limits on the type of information that can be learned. For example, the Government physically surveilled several members of the DTO. When the Government attempted to follow Mayfield while he was driving, Mayfield employed a number of techniques to identify and foil anyone following him. And, while physical surveillance and video surveillance revealed who individuals were meeting, those tools did not provide any information about the information exchanged in the meeting. The Government considered and decided not to use other traditional investigative techniques such as interviews, searches, trash pulls and mail cover requests. Using some of these tools would tip off the DTO. For these tools, like trash pulls, the Government has explained why the tool would not work in these particular circumstances. As an example, because of the location of the trash collection points, the Government rejected using trash pulls at Mayfield's residence because of the high risk of detection.

Here, the Government did not request a wiretap as the initial investigative tool. The affidavit discloses that the investigation had been in progress for about one year. The Government identified ten known individuals associated with the DTO. The Government demonstrated that it considered each of the more traditional investigative tools. The Government established that it used and was still using several different investigative tools, with limited success. The Government also established why it rejected the use of other tools in this particular investigation. And, for the many of the tools, the Government provides an example of how the tool was not useful or would not be useful in this investigation

Although the Government has used some boilerplate language, the boilerplate is limited. Where the Government used boilerplate language, the language reflects factual statements that are generally true across investigations (e.g., mobile tracking devices and telephone records will not reveal information about conversations between co-conspirators). Because the Government has considered and used many of the tools, and because the tools did not produce the information necessary to reveal the scope of the criminal enterprise, the Government established the necessity of wiretaps and the warrant was properly issued.

The affidavit for the second warrant also established the necessity requirement. For the second warrant application, the Government incorporated information learned from the first wiretap. In the affidavit supporting the second application, the Government explained how each tool continued to be used, and the level of success realized. For example, with the information learned during the wiretap, physical surveillance has proved more successful because the Government has identified more individuals that were part of the DTO.

III.

In Defendant Nicole Starr's "me too" motion, she raises the argument that the warrants were not properly reviewed or authorized.² (ECF No. 417.) Starr expresses concern about the manner in which the signatures appear on the memorandums establishing review of the applications and affidavits by an authorized official. Starr points out that the individuals who appear to have drafted the memorandums authorizing the applications for warrants are not the individuals to ultimately signed the memorandums.

² Starr filed an initial motion (ECF No. 411) and then a corrected motion (ECF No. 417).

The individuals who signed the memorandums are designated individuals with the requisite authority. The special designation orders are attached as an exhibit to the warrant applications. The specific individuals who signed the applications are not named in the designation order. However, the designation order and the statute reference the title of the two individuals who signed the warrant applications— acting deputy assistant attorney general criminal division and deputy assistant attorney general criminal division. By signing the memorandums, the officials represent that the applications and affidavits have been reviewed and may be submitted to a federal judge for approval. The evidence suggests the required review occurred. Defendant Starr's suspicion, without more, does not provide a basis for this Court to suppress the evidence.

Starr also raised an argument about the recording of innocent conversations. At the hearing, Starr withdrew this argument.

IV.

Defendants have not established a reason to suppress the evidence gathered during the execution of two Title III wiretaps. The affidavits and applications submitted to a federal judge contained sufficiently specific information to show the necessity for electronic surveillance. The affidavits and applications demonstrate that the Government did not seek wiretaps as a first option and needed the wiretaps because the more traditional investigative tools had produced useful, but limited, information. Therefore, the motions to suppress are denied.

ORDER

For the reasons provided in the accompanying Opinion, Defendant Mayfield's motion to suppress (ECF No. 361) is **DENIED**. For the same reasons, the following "me too" motions are also denied:

Defendant Stephawn McFadden (ECF No. 370);

Defendant Yvette Brown (ECF No. 372);

Defendant Jeffrey Dean (ECF No. 375);

Defendant Ryan Brown (ECF No. 378);

Defendant Elsie Boston (ECF No. 380);

Defendant Taniedra White (ECF No. 381);

Defendant Trebarius McGee (ECF No. 387);

Defendant Martinellus Nix (ECF No. 389);

Defendant Marvin Nix (ECF No. 394);

Defendant Quincy Lofton (ECF No. 397);

Defendant Douglas Carey III (ECF No. 399);

Defendant Craig James (ECF No. 400);

Defendant Demarcus Pinder (ECF No. 403);

Defendant Jessica Gatica (ECF No. 404);

Defendant Monica Laster (ECF No. 406);

Defendant Troy Lewis (ECF No. 409);

Defendant Nicole Starr (ECF No. 411 and 417).

The relief requested is also denied as to Defendant Donald Gardner. Gardner requested leave to join Defendant Mayfield's motion (ECF No. 461), which was granted by the Court. (ECF No. 464). The Court's docket does not reflect that Defendant Gardner has a pending motion to suppress.

IT IS SO ORDERED.

Date: January 22, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge